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Attorneys for Plaintiff,
DELIA MCVICAR

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DELLA MCVICAR,
Plaintiff,
v.
HUNT & HENRIQUES,
Defendant.

) Case No.: '10CV2113 JM JMA
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COMPLAINT

Plaintiff, DELIA MCVICAR (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, HUNT & HENRIQUES (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692, *et seq.*
 2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act (RFDCPA), Cal. Civ. Code §1788, *et seq.*

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy," and 28 U.S.C. 1337 grants this court
2 supplemental jurisdiction over the state claims contained within.

- 3 4. Defendant conducts business in the state of California, and therefore, personal
jurisdiction is established.
5 5. Venue is proper pursuant to 28 U.S.C. 1331(b)(2).

6 **PARTIES**

- 7 6. Plaintiff is a natural person residing in Ramona, San Diego County, California.
8 7. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
9 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
10 and Cal. Civ. Code § 1788.2(h).
11 8. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ.
12 Code § 1788.2(c), and sought to collect a consumer debt from Plaintiff.
13 9. Defendant is a collection law firm with a business office in San Jose, California.
14 10. Defendant acted through its agents, employees, officers, members, directors, heirs,
15 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
16 insurers.

17 **FACTUAL ALLEGATIONS**

- 18 11. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor,
HSBC Bank, with an account number ending in -2645 (Defendant's internal Reference
Number assigned to Plaintiff: 271814.001).
21 12. Plaintiff's alleged debt owed to HSBC Bank, arises from transactions for personal,
family, and household purposes.
23 13. On June 16, 2009, Plaintiff faxed a cease and desist letter to Defendant. *See Exhibit A.*
24 14. On July 16, 2009, Plaintiff faxed a notice of representation letter to Defendant. *See*
25 *Exhibit A.*

15. Despite receiving Plaintiff's letter (Exhibit A), Defendant communicated with Plaintiff after July 16, 2009, in an attempt to collect a debt, including but not limited to sending a letter dated October 12, 2009. *See* Defendant's letter dated October 12, 2009, attached hereto as Exhibit B.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

16. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
 - b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.
 - c. Defendant violated §1692d of the FDCPA by engaging in conduct that the natural consequences of which was to harass, oppress, and abuse Plaintiff in connection with the collection of an alleged debt.

WHEREFORE, Plaintiff, DELIA MCVICAR, respectfully requests judgment be entered against Defendant, HUNT & HENRIQUES, for the following:

17. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15
U.S.C. 1692k,

18. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
15 U.S.C. 1692k

19. Any other relief that this Honorable Court deems appropriate.

COUNT II
**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT**

20. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

21. Defendant violated the RFDCPA based on the following:

- a. Defendant violated the §1788.14(c) of the RFDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
 - b. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692, *et seq.*

WHEREFORE, Plaintiff, DELIA MCVICAR, respectfully requests judgment be entered against Defendant, HUNT & HENRIQUES, for the following:

22. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788.30(b),

23. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ Code § 1788.30(c), and

24. Any other relief that this Honorable Court deems appropriate

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, DELIA MCVICAR, demands a jury trial in this case.

RESPECTFULLY SUBMITTED

DATED: October 11, 2010 KROHN & MOSS, LTD.

By: /s/ Michael S. Agruss

Michael S. Agruss
Attorney for Plaintiff,
DELIA MCVICAR

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2 **Exhibit A**
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16 June 2009

BY FAX ONLY: 408-362-2299
Page 1 of 3

Hunt & Henriques, ESQ
151 Bernal Rd. Ste. 8
San Jose CA 95119

Re: Delia McVicar
Alleged creditor: HSBC Bank
Your file or reference No.: 271814.001
Our file No.: 11118

Dear Sir or Madam:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby disputes the above-referenced alleged debt and requests validation of it in accordance with 15 U.S.C. § 1692g. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must cease contacting them according to §§ 1692c(a)(2) AND 1692c(c) of the Fair Debt Collection Practices Act, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. They exist exclusively on income from non-garnishable sources; e.g., social security, disability, veteran's or retirement benefits. I have also enclosed my client's affidavit swearing to this fact. As you should know, this income is protected from execution, levy, attachment, garnishment and other legal process by federal law. The attachment or attempted attachment of these benefits is considered a violation of § 1692(f) of the Fair Debt Collection Practices Act, so please govern your actions accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jerome S. Lamet".

Jerome S. Lamet, Supervising Attorney
Debt Counsel for the Seniors and the Disabled
Cc: Delia McVicar

TRANSMISSION VERIFICATION REPORT

TIME : 06/15/2009 10:55
NAME : JEROME LAMET LTD
FAX : 13123553199
TEL : 13129392221
SER. #: BROD&J797996

DATE, TIME	06/15 10:53
FAX NO./NAME	14083622299
DURATION	00:01:10
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM



16 June 2009

BY FAX ONLY: 408-362-2299
Page 1 of 3

Hunt & Henriques, ESQ
151 Bernal Rd. Ste. 8
San Jose CA 95119

Re: **Delia McVicar**
Alleged creditor: HSBC Bank
Your file or reference No.: 271814.001
Our file No.: 11118

Dear Sir or Madam:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby disputes the above-referenced alleged debt and requests validation of it in accordance with 15 U.S.C. § 1692g. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must cease contacting them according to §§ 1692c(a)(2) AND 1692c(c) of the Fair Debt Collection Practices Act, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. There exist

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2 **Exhibit B**
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HUNT & HENRIQUES

**MICHAEL S. HUNT
JANALIE HENRIQUES**

ATTORNEYS AT LAW
151 BERNAL ROAD, SUITE 8
SAN JOSE, CA 95119-1306

AREA CODE 408
TELEPHONE 362-2270
FACSIMILE 362-2299

October 12, 2009

Re: SETTLEMENT OFFER
HSBC BANK NEVADA, N.A.
XXXXXXXXXXXX2645
Total Amount Due [REDACTED]

Dear DELIA M MCVICAR:

As you are aware, your obligation to our client HSBC BANK NEVADA, N.A. has been referred to our office for collection.

The current balance due is [REDACTED] In an effort to settle this matter and limit future collection actions our client has authorized our firm to extend a settlement offer to you.

Our client will accept a lump sum of [REDACTED] as a settlement and final payment of your current obligation. The payment must reach our office on or before November 02, 2009. The offer to settle expires at the close of business on November 02, 2009. HSBC BANK NEVADA, N.A. is not obligated to make the same or similar offers at any time in the future.

You may pay by cashier's check, personal check, or call us to set up an electronic payment. Your check should be made payable to our client and mailed to the address on this letterhead.

If circumstances prevent you from taking advantage of this generous offer at this time, our client has authorized our office to negotiate reasonable payment plans. In some cases arrangements can go up to 36 months. If you have any questions or wish to discuss this matter please contact our office at 1-800-496-5048. We look forward to speaking with you.

This firm is a debt collector. The purpose of this letter is to collect a debt and any information obtained will be used for the purpose of collecting the debt.

Very truly yours,

Hunt & Henriques
Attorneys at Law

*California, Colorado, Massachusetts Residents - see reverse side for information on your rights as a consumer per Debt Collection Practices.

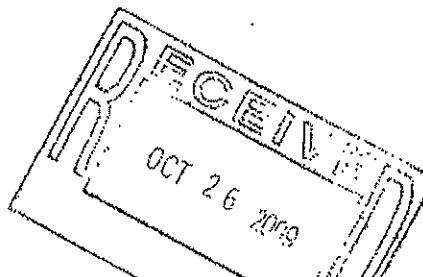
X

Detach bottom section and return with payment

X

HUNT & HENRIQUES
ATTORNEYS AT LAW
151 BERNAL ROAD, SUITE 8
SAN JOSE, CA 95119-1306
RETURN SERVICE REQUESTED

S-SFHUHE10 L-DD0000HB A-271814.001
POWEUT00217145 I34290
DELIA M MCVICAR
[REDACTED]
[REDACTED]



HUNT & HENRIQUES
ATTORNEYS AT LAW
151 BERNAL ROAD, SUITE 8
SAN JOSE, CA 95119-1306

[REDACTED]

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.